

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA**

In re:

Case No. 16-61608
Chapter 13

JULIE PETERS

Debtor.

SCOTT AND CAROLINE MCDONALD

Movant,

v.

Motion for Relief from Stay

JULIE PETERS
Chapter 13 Debtor,

Respondent.

MOTION FOR RELIEF FROM STAY

COME NOW Scott and Caroline McDonald ("Mr. and Mrs. McDonald"), by counsel, pursuant to Bankruptcy Code §362 and Bankruptcy Rule 4001, and move for relief from the bankruptcy stay as to the property owned by Julie Peters, located at 1121 West Leigh Drive, Charlottesville, VA, as more particularly described below.

In support thereof, Mr. and Mrs. McDonald state as follows:

JURISDICTION

1. As hereinafter more fully appears, jurisdiction is based upon Bankruptcy Code §362 and Bankruptcy Rule 4001, and this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1334 and 157(a). This is a "core proceeding" pursuant to 28 U.S.C. §§157(b)(2)(A) and (b)(2)(O).

PARTIES

2. On August 10, 2016, Julie Peters ("Ms. Peters") filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code in the United Bankruptcy Court for the Western District of Virginia.

3. Herbert L. Beskin is the duly-appointed Chapter 13 trustee for Ms. Peters.

4. Mr. and Mrs. McDonald are the owners and holders of a note on the property by Julie Peters located at 1121 West Leigh Drive, Charlottesville, VA.

FACTS

5. Mr. and Mrs. McDonald are the owners and holders of a certain Promissory Note made by Debtor dated March 31, 2014, in the maximum principal amount of \$360,000 (the "Note"). A true and correct copy of the Note is attached hereto as **Exhibit A**.

6. The Note is secured by a Deed of Trust dated March 31, 2014, which constitutes a first lien encumbering real estate known as 1121 West Leigh Drive, (TMP 059C2-01-00-01500) (the "Property") which is more particularly described as follows:

PARCEL 1:

That certain lot or parcel of land with improvements thereon situated in the Samuel Miller Magisterial District (formerly Ivy Magisterial District) of Albemarle County, Virginia, in the subdivision known as West Leigh, and being more particularly described as Lot 15, in the plat of West Leigh, dated July, 1959, made by A. R. Sweet and Associates, of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in deed Book 355, at page 277; and

PARCEL 2:

That certain lot or parcel of land situated in the Samuel Miller Magisterial District (formerly Ivy Magisterial District) of Albemarle County, Virginia, in the subdivision known as West Leigh and being more particularly described as Parcel "X" on a plat captioned "Plat showing Lot 14A to be added to Lot 15, near Ivy, Albemarle County, Virginia," dated November, 1962, made by William S. Roudabush, Jr., attached to the deed of Westleigh, Inc., dated February 27, 1963, recorded March 5, 1963, in the above Clerk's Office in Deed Book 386, page 293.

A true and correct copy of the Deed of Trust is attached hereto as **Exhibit B**.

7. Lenhart Pettit PC was substituted as Trustees under the Deed of trust pursuant to the Substitution of Trustee executed October 29, 2015 and recorded on November 9, 2015, and recorded in the Clerk's office of the Circuit Court of Albemarle County, Virginia, in Deed Book 4693, page 464.

8. Because of the continued default and maturity of the Note secured by the Deed of Trust, the Substitute Trustee was directed to foreclose on the Property and a formal notice of foreclosure was sent to Debtor setting the sale for August 12, 2016.

9. A foreclosure sale was scheduled and advertised to be held on August 12, 2016. The sale was cancelled as a result of the Debtor's bankruptcy filing.

10. As of the date of the filing of the bankruptcy petition on August 10, 2016, the Note had a payoff balance of \$383,113.20, consisting of \$360,000.00 in principal, \$7,993.20 in interest and \$15,120.00 in late charges. In addition, the Deed of Trust secures all costs of collection, including attorney's fees. As of December 31, 2016, the total payoff amount is \$404,693.01 consisting of \$360,000 in principal, \$27,120 in interest and late charges, and \$17,573.01 in attorneys' fees.

BASIS FOR GRANTING RELIEF FROM THE BANKRUPTCY STAY

11. Mr. and Mrs. McDonald ask for relief from the Bankruptcy Stay pursuant to 11 U.S.C. §362(d)(1) and Rule 4001 of the Federal Rule of Bankruptcy Procedure.

12. On December 29, 2016, the Court entered a Consent Order regarding Debtor's Motion to Sell Real Estate and Mr. and Mrs. McDonald's Objection to that Motion. The Consent Order sets forth specific deadlines to be met by the Debtor relating to the marketing and

sale of the Property. A true and correct copy of the Consent Order is attached hereto as **Exhibit C.**

13. If the deadlines in the Consent Order are not met, Debtor has agreed that the Court will grant relief from the automatic stay to Mr. and Mrs. McDonald in order that they may foreclose on the Property.

14. Mr. and Mrs. McDonald file this Motion in order to seek relief from the automatic stay in the event Debtor fails to meet the deadlines set forth in the Consent Order.

WHEREFORE, Creditors Scott and Caroline McDonald respectfully request that upon notice being provided by them of Debtor's non-compliance with the Consent Order, this Court enter an Order granting Scott and Caroline McDonald relief from the bankruptcy stay in order to allow it to foreclose on the Property located at 1121 West Leigh Drive, Charlottesville, Virginia in accordance with state law remedies, and granting such other and further relief as this Court deems just and proper.

NOTICE OF HEARING

Please take notice that on February 9, 2017, at 9:30 a.m. or as soon thereafter as it may be heard, Scott and Caroline McDonald seek to be heard on the foregoing Motion for Relief from Stay in the United States Bankruptcy Court located at Room 200, U.S. Courthouse, 255 W. Main Street, Charlottesville, VA 22901.

Respectfully submitted this 10th day of January, 2017.

SCOTT and CAROLINE MCDONALD
By Counsel



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CERTIFICATE

I hereby certify that I electronically filed this pleading this 10th day of January, 2017, and mailed copies to:

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